

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TRELLA AREVALO**

Claimant

VS.

**IBP, INC.**

Respondent

Self Insured

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Docket No. 168,101

**ORDER**

Respondent requested review of the preliminary hearing Order dated August 29, 1995, entered by Administrative Law Judge Floyd V. Palmer, and the preliminary hearing Order for Compensation dated October 8, 1999, entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Judge Avery granted claimant's request for temporary total disability benefits. Respondent's application for review describes the issue as whether the ALJ exceeded his authority in awarding temporary total disability benefits for the period from June 16, 1999 to August 1, 1999. Respondent also seeks review of Judge Palmer's award of temporary total disability benefits during vocational rehabilitation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and for purposes of preliminary hearing, the Appeals Board finds and concludes that the issues raised by respondent are not jurisdictional issues and the appeal must, therefore, be dismissed.

As to the appeal from Judge Palmer's August 29, 1995 Order, the Appeals Board is without jurisdiction to review that Order. Judge Palmer's Order was previously appealed to the Board and an Order was entered. It cannot be appealed again until the time of final award.

As to the appeal from Judge Avery's Order, the Board has limited jurisdiction on an appeal from a preliminary hearing order. K.S.A. 1998 Supp. 44-534a grants jurisdiction to the Board to review the following issues on appeal from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of employment; (3) whether notice and claim were timely made; and (4)

whether certain defenses apply. Respondent does not raise an issue that falls within one of these categories. Therefore, at this stage of the proceedings, K.S.A. 1998 Supp. 44-534a does not empower the Board with jurisdiction to decide the issue appealed.

K.S.A. 1998 Supp. 44-551(b) confers jurisdiction upon the Board to review an appeal from a preliminary hearing order entered pursuant to K.S.A. 1998 Supp. 44-534a where it is alleged that the administrative law judge exceeded his or her jurisdiction in making such order. An administrative law judge has the authority at a preliminary hearing to determine whether a claimant is temporarily and totally disabled. Therefore, Judge Avery did not exceed his jurisdiction and K.S.A. 1998 Supp. 44-551(b) does not grant the Board jurisdiction, at this juncture of the proceeding, to review and reweigh the evidence concerning the award of temporary total disability benefits.

The respondent may preserve the issue for final award as provided by K.S.A. 1998 Supp. 44-534a(a)(2). That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review either the preliminary hearing Order dated August 29, 1995, entered by Administrative Law Judge Floyd V. Palmer or the Order for Compensation dated October 8, 1999, entered by Administrative Law Judge Brad E. Avery and that this review should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 2000.

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BOARD MEMBER

c: James C. Wright, Topeka, KS  
Jennifer L. Hoelker, Dakota City, NE  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director